

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED  
JUN 10 2002  
Michael N. Mulby, Clerk

MARK NEWBY, et al.,

Plaintiffs,

vs.

ENRON CORPORATION, et al.,

Defendants.

No. H 01-3624

(Consolidated Action)

ORIGINAL

PAMELA M. TITTLE, et al.,

Plaintiffs,

vs.

ENRON CORPORATION, et al.,

Defendants.

No. H 01-3913 ✓

(Consolidated Action)

**MOTION OF THE SECRETARY OF LABOR FOR LEAVE  
TO FILE A BRIEF AS AMICUS CURIAE**

The United States Secretary of Labor, Elaine L. Chao ("the Secretary"), respectfully moves this Court for permission to file a brief as amicus curiae to address issues raised by the defendants in their motions to dismiss. On May 8, 2002, the defendants moved to dismiss several counts of the complaint, including Counts I through V which allege violations of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. (Section) 1001 *et seq.*

The Secretary is the Federal officer charged with interpreting and enforcing the provisions of ERISA involved in this action. As the Federal officer with primary authority to enforce these provisions, the Secretary has a significant interest in the proper application of the safeguards Congress established through ERISA for the administration of employee benefits plans and the protection of participants in those plans. The Secretary's interests include promoting uniformity of law, protecting beneficiaries, enforcing fiduciary standards, and ensuring the financial stability of employee benefit plan assets. Secretary of Labor v. Fitzsimmons, 805 F.2d 682 (7th Cir. 1986) (en banc).

The motions to dismiss present several issues in which the Secretary has an interest such as the nature and scope of ERISA's fiduciary duties, the remedies available under ERISA, and participants' standing under ERISA. Because this Court's ruling is likely to have a significant impact on the development of the law on these important ERISA issues, as well as on the Secretary's own investigation and possible litigation relating to the Enron plans, the Secretary moves for leave to file an amicus brief in order to bring her position on these issues to the Court's attention.

THEREFORE, the Secretary respectfully requests that the Court grant her motion for leave to file a brief as amicus

curiae, and that she be permitted to file the brief on a date thirty days after the Court grants this motion.

Because of concerns regarding the spread of anthrax spores through the mail, at the present time all mail sent through the United States Postal to the Department is subject to extraordinary procedures which have had, in many cases, the effect of significantly delaying the delivery of mail to the Department. For this reason, the Department specifically requests that the Court and all the parties serve all papers on the Secretary either through Federal Express or United Parcel Post overnight delivery service or by hand delivery. If service by the Court through Federal Express or United Parcel Post is unavailable, the Secretary respectfully requests service by the Court only be made through FAX at 202-693-5610 or e-mail at schloss-michael@dol.gov and perlman-leslie@dol.gov. The Secretary appreciates the cooperation of the Court and the parties in dealing with these extraordinary circumstances.

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Respectfully submitted:

Dated: June 7, 2002

For the Secretary:  
EUGENE SCALIA  
Solicitor of Labor

TIMOTHY D. HAUSER  
Associate Solicitor  
Plan Benefits Security Division

LESLIE CANFIELD PERLMAN  
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CERTIFICATE OF SERVICE

The undersigned certifies that on the 7th day of June 2002 a true and correct copy of the forgoing:

**MOTION OF THE SECRETARY OF LABOR FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE**

was served upon all parties, representatives and attorneys in the above entitled and numbered case, by United States Mail, First Class, postage pre-paid, at the following addresses:

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